

PART 6 – APPLICATIONS AND REVIEW PROCEDURES

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Chapter 1 – Approval and Appeal Authorities

Section 6-101 Summary Decision Matrix.

Section 6-101 Summary Decision Matrix.

The following table describes the decision-making authority and the appeal authority for the approvals that may be granted under this Code.

Table 6-101A – Applications by Decision Body and Type of Procedure¹

Application	Decision Body										Neighborhood Meeting	Code Sec.	Notes
	DS MGR	ZA	ORIGINAL	HO	BOA	DRB	P&Z	RRC	CC	Superior Court			
Annexation									D			ARS 9-471	
Code Interpretation/ Similar use Ruling		D			A					A		LUDC 6-301	
Development Plan: ▪ Major (all new development & expansions over 5,000 square feet, except single family homes not included in a PAD) ▪ Minor (expansions up to 5,000 square feet ; and two- and three-family dwelling projects)	D					A		D	A		Yes	LUDC 6-306 LUDC 6-302 LUDC 6-302	
General Plan Amendment: Major Minor							Rev Rev	Rev Rev	D D	Yes Yes		LUDC 6-308 LUDC 6-308	Goes to public vote Goes to public vote
Modify Approved Plan or Condition of Approval: ▪ Major Modification ▪ Minor Modification	D		D A						A	A	Yes	LUDC 6-305 LUDC 6-305	N. Mtg required prior to hearing
Land Use (Zoning) District Amendment							Rev	Rev	D	A	Yes	6-308	
Code Text Amendment							Rev	Rev	D	A		6-308	
Lot Line Adjustment	D											TCC 31	
Lot Split									D			TCC 31	
Parking By Demand Study	D				A							LUDC 6-310	
Planned Area Development: ▪ With zoning ▪ Without zoning						D D	D Rev	D Rev	D A	A A	Yes	LUDC 6-305 LUDC 6-305	

KEY

DS MGR = Development Service Manager or his or her designee

ZA = Zoning Administrator

ORIGINAL = Original decision body

HO = Hearings Officer

BOA = Board of Adjustment

DRB = Design Review Board

P&Z = Planning and Zoning Commission

RRC = Redevelopment Review Commission

CC = City Council

rev = Reviews and recommends action to City Council

D = Decision-making body

A = Appeal authority

Table 6-101A – Applications by Decision Body and Type of Procedure¹

Application	Decision Body										Neighborhood Meeting	Code Sec.	Notes
	DS MGR	ZA	ORIGINAL	HO	BOA	DRB	P&Z	RRC	CC	Superior Court			
Sign Permit	D					A				A		LUDC 4-600	
Subdivision							Rev		D			TCC 31	
Time Extension			D									LUDC 6-900	
Temporary Use				D	D					A		LUDC 3-401	
Variance				D	D/A		D	D	D	A	Yes	LUDC 6-311	
Use Permit				D	D/A		D	D	D/A	A	Yes	LUDC 6-304	

Where this Code identifies more than one possible decision or appeal body, the Development Services Manager shall determine which body is applicable to a particular project

KEY**DS MGR** = Development Service Manager or his or her designee**ZA** = Zoning Administrator**ORIGINAL** = Original decision body**HO** = Hearings Officer**BOA** = Board of Adjustment**DRB** = Design Review Board**P&Z** = Planning and Zoning Commission**RRC** = Redevelopment Review Commission**CC** = City Council**rev** = Reviews and recommends action to City Council**D** = Decision-making body**A** = Appeal authority

Chapter 2 – Application Submittal and Review

Section 6-201	Initiation and Withdrawal of Application.
Section 6-202	Preliminary Review Process.
Section 6-203	Application Submittal.
Section 6-204	Application Acceptance.
Section 6-205	Administrative Review Steps.
Section 6-206	Public Hearing Review Steps.
Section 6-207	Legislative Review Steps.

Section 6-201 Initiation and Withdrawal of Application.

A. Initiation of Application.

1. **Zoning and text amendment:** The regulations and boundaries of zoning districts set forth in this ordinance may be amended whenever deemed necessary to best serve the public interest, and the health, comfort, convenience, safety and general welfare of the city. Amendments to the text or zoning map of this ordinance shall not be made except through the adoption of an amending ordinance by the City Council and following the procedure prescribed in this ordinance. Requests for such amendments shall be made by the owner(s) of the subject real property or any city of Tempe government officer, department, board or commission, or by the City Council, under its own motion:
 - a. Requests for amendment(s) shall be submitted, in writing, to the secretary of the planning and zoning commission in the development services department. The written request shall specify the nature of the amendment with pertinent details to explain or support the request; and
 - b. Requests for amendment initiated by the owner or owners of real property situated in the city shall be submitted in writing.
2. **All Other Applications:** Any development application must include the property owner's written authorization.

- B. Withdrawal.** An applicant may withdraw an application at any time or the Development Services Manager may withdraw an application at the request of the applicant.

Section 6-202 Preliminary Review Process.

- A. **Purpose.** The purpose of the preliminary review conference is to acquaint the prospective applicant or applicant's representative(s) with the requirements of this Code, the General Plan and other relevant City policies and regulations. While the preliminary review conference is intended to be informative, it is not intended to provide an exhaustive review of all potential issues. Applications must comply with the standards in effect at the time of application submittal.
- B. **Applicability.** The preliminary review conference is required for new development or exterior modifications to existing development, but is not required for single family dwellings or structures that are accessory to a single family dwelling. A preliminary review conference may also be held if requested by the prospective applicant or applicant's representative for a change in use, single family dwelling, or other proposal.
- C. **Preliminary Review Submittal.** The applicant or applicant's representative is responsible for providing information to the City that is sufficient to describe the proposed use and/or development. (See Appendix for submittal requirements.) The quality of the preliminary review conference will be enhanced if this information is provided in advance. Basic information provided for the preliminary review conference must include two (2) sets of plans (24" x 36" for large projects, or 11"x17" for others) filed at the Development Services Department by the pre-application submittal deadline. Plans must be submitted with a completed Project Submittal Form.
- D. **Preliminary Review.** Staff from the reviewing City departments and divisions will provide comments to the Development Services Manager or his or her designee ("Review Coordinator"). After plans have been compiled by the Review Coordinator, he or she will contact the applicant or applicant's representative to schedule a preliminary review conference, which shall be held at the Development Services Department by appointment. Staff will review the comments with the applicant or applicant's representative at the preliminary review conference and provide information on City code requirements, procedures, and other relevant City policies and regulations. The applicant is responsible for ensuring that his or her application complies with the standards in effect at the time the application is submitted.

Section 6-203 Application Submittal.

- A. **Application Forms and Submittal Requirements.** Applications under the Tempe Land Use and Development Code shall be submitted to the Development Services Department, in accordance with the format and upon such forms as may be established by the Development Services Manager. Applications must be signed by the property owner or the property owner's authorized representative agent, except that applications initiated by the City Council must be signed by the Development Services Manager (See Appendix.)

- B. **Concurrent Review of Applications for Same Project.** The applicant or Development Services Manager may elect to combine multiple applications for concurrent review when the applications are for the same project and the same decision-making body is responsible for reviewing all of the applications related to the project. For example, the Zoning Administrator may review an application for a code interpretation concurrently with an application for a non-conforming use determination; and the Planning and Zoning Commission may review an application for site plan approval concurrently with a variance application that relates to the site plan.

Section 6-204 Application Acceptance.

- A. **Initial Review for Completeness.** The Development Services Manager or his or her designee shall review the application for completeness, in conformance with Section 6-204. If the application is complete, it shall be accepted for processing in conformance with this Code.
- B. **Complete Application.** A complete application is one which contains the information required to address the relevant standards of this Code and the applicable standards and requirements of the General Plan, as specified in this Code. The application shall be deemed complete when the Development Services Manager or his or her designee has determined that all of the following information has been submitted.
1. A completed original application form that is signed by the property owner or his or her authorized representative agent, or the Development Services Manager for applications initiated by the City Council. In lieu of signature by property owner, a letter of authorization shall substitute. Application forms are provided in Appendix;
 2. Applicable application fee, as provided in Appendix;
 3. The application shall include current Maricopa County tax map(s) showing the subject property(ies) and all properties within three hundred (300) feet of the subject property(ies) and documentation of the names and addresses of the owners of record. The list of record owners will be used as the mailing list for any public notice. The applicant is responsible for submitting the mailing list of property owners of record to the Development Services Department. For projects containing more than one parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project (all phases);
 4. Plans, exhibits, studies, and/or other information required pursuant to Part 6, Chapter 3, Application Requirements and Approval Criteria;
 5. A letter explaining the nature and intent of the proposed development and reasons justifying the request. References to the effects produced by the request upon surrounding neighborhoods, and the city at large, should be included;

6. Additional information such as development plans, elevations, Planned Area Development plans, landscape plans, traffic analysis impact studies, or other information directly related to the applicable Code standards, as deemed essential by the Development Services Manager, to evaluate adequately the application for compliance with those criteria and standards; and
 7. Cash or check payable to the City of Tempe in accordance with the fee schedule in effect at the time of application.
- C. Scheduling.** The City will not schedule a meeting or hearing date until the application is complete. If the applicant fails to submit the missing information within sixty (60) days of the first submittal, the Development Services Manager may notify the applicant that the application can not be accepted and a new application will be required for the proposed project. The Development Services Manager's decision is not subject to appeal; nor shall it be construed as denial of the application.
- D. Processing Application.** Processing of an application indicates only that the application is ready for review. The Development Services Manager may accept additional information from the applicant at the discretion of the Manager during the review process.

Section 6-205 Administrative Review Steps.

The steps in reviewing Administrative (Type A) applications are:

- A. Preliminary Review Conference.** See Section 6-202.
- B. Submit Application.** The applicant submits an application in accordance with Section 6-203.
- C. Completeness Determination.** The Development Services Manager or his or her designee ("Review Coordinator") reviews the submittal for completeness. See Section 6-204.
- D. Review.** The Staff Review Team reviews the application and provides comments to the Development Services Manager or his or her designee ("Review Coordinator"). The Review Coordinator provides the comments to the decision-making body, who may approve, approve with conditions, or deny the application.
- E. Design Review Board Meeting (as applicable).** If the application is for Major Development Plan Review approval, the Design Review Board or Redevelopment Review Commission, as applicable, reviews and decides on the application in a public meeting.

- F. **Notice of Decision.** The Development Services Manager, or his or her designee provides notice of the decision in writing to the applicant or the applicant's representative and owners of the subject property.
- G. **Appeal.** Any appeals of an Administrative decision shall be filed no later than ten (10) calendar days after the date on which the decision was rendered.

Section 6-206 Public Hearing Review Steps.

The steps in reviewing Public Hearing (Type B) applications are:

- A. **Preliminary Review Conference.** See Section 6-202.
- B. **Submit Application.** The applicant submits an application in accordance with Section 6-203.
- C. **Completeness Determination.** The Development Services Manager or his or her designee ("Review Coordinator") reviews the application for completeness. See Section 6-204..
- D. **Neighborhood Meeting.** The applicant is responsible for conducting an informational neighborhood meeting. See Section 6-402.
- E. **Schedule Public Hearing.** Staff schedules public hearing with decision-making body, per subsection C, above.
- F. **Post Notice on Property.** Staff posts property with notice of hearing at least fifteen (15) calendar days prior to hearing date (Section 6-403).
- G. **Mail Notice.** Staff mails notice of the pending application to owners of property within 300 feet of the subject site, including neighborhood association(s) and home owners associations, where the site is located at least 15 calendar days prior to the hearing ((Section 6-404).
- H. **Review.** The Staff Review Team reviews the application and provides comments to the Development Services Manager or his or her designee ("Review Coordinator"), who will then prepare a staff report in accordance with (Section 6-406).
- I. **Public Hearing.** A public hearing is held before the decision-making body, as identified in Table 6-101. The decision-making body renders a decision on the application.
- J. **Notice of Decision.** The Development Services Manager, or his or her designee provides notice of the hearing body's decision in writing to the applicant or the applicant's representative and owners of the subject property.
- K. **Appeal.** Any appeal of a decision shall be filed within ten (10) calendar days of the date when the decision was rendered where the City of Tempe is the appellate body,

or within thirty (30) calendar days of the decision date where the Superior Court is the appellate body.

Section 6-207 Legislative Review Steps.

For requirements related to City Council review, please refer to City Charter, Section 2.11, Action Requiring Ordinances in General, and Arizona Revised Statute 9-461.06.

Chapter 3 – Application Requirements and Approval Criteria

Section 6-301	Code Interpretations and Similar Use Rulings.
Section 6-302	Development Plan Review.
Section 6-303	General Plan Amendment.
Section 6-304	Modify Approved Plan or Condition of Approval.
Section 6-305	Planned Area Development.
Section 6-306	Site Plan Review.
Section 6-307	Use Permit.
Section 6-308	Zone Map Amendment.
Section 6-309	Security Plan.
Section 6-310	Parking Demand Study.
Section 6-311	Variances.

Section 6-301 Code Interpretations and Similar Use Rulings.

- A. **Purpose.** The purpose of Section 6-301 is to provide a method for making code interpretations and similar use rulings. Any use not appearing in this ordinance which is similar to, and not more detrimental than the uses permitted herein, as determined by the zoning administrator, may be permitted in the area upon securing a use permit.
- B. **Procedure.** Code interpretations and similar use rulings may be requested by an applicant, City staff, or a City decision-making body. Code interpretations and similar use rulings are processed as Administrative decisions by the Zoning Administrator, except that when the Development Services Manager or applicant requests a hearing with Hearings Officer such interpretations and rulings are decided by the Hearings Officer. When the applicant has another application coming before a hearings body and that application is dependent upon the interpretation or similar use ruling, the requests may be processed concurrently by the hearings body. In cases where an application is pending a decision on a code interpretation or similar use ruling, the interpretation or ruling shall precede the dependent application.

- C. **Application Requirements.** In addition to the application requirements for Administrative Review, an application for code interpretation or similar use ruling shall include a written statement indicating why the applicant believes his or her interpretation of the code is correct. See Appendix for submittal requirements.
- D. **Approval Criteria.** The decision-making body shall base its decision on the definitions and other provisions contained in this Code, relevant City policy, and/or any applicable State or Federal law or case law.
- E. **Record.** Code interpretations and similar use rulings shall be catalogued and kept in the Land Use and Development Code Appendix.

Section 6-302 Development Plan Review.

- A. **Purpose.** Development Plan Review is intended to encourage, protect and enhance the functional and attractive appearance of the City of Tempe. The city recognizes that the creation of a desirable environment throughout the city for residents, businesses, and industry is a prime requisite for the preservation of property values; for the development of functional and compatible uses and buildings; and for the preservation of public health, safety and general values.
- B. **Procedure.** Development Plan applications shall be reviewed administratively by the Zoning Administrator for Minor Development Plan Reviews, and by the Design Review Board (“DRB”) in a public meeting for a Major Development Plan Reviews. Minor Development Plan Review applies to projects containing less than 5,000 square feet of gross floor area and two- and three-family dwellings. Major Development Plan Review applies to projects containing 5,000 square feet gross floor area, or more.
- C. **Approval Criteria.** Development Plan approval requires conformance with the standards and criteria in subsections 1-6, below. The decision-making body may impose reasonable conditions to ensure conformance with these provisions:
 - 1. The allowable land uses in Part 3;
 - 2. The development standards in Part 4;
 - 3. Any applicable overlay zone provisions in Part 5; and
 - 4. The following design criteria :
 - a. The placement of buildings reinforces and provides variety in the street wall, maximizes natural surveillance and visibility of pedestrian areas (building entrances, pathways, parking areas, etc.), enhances the character of the surrounding area, and facilitates pedestrian access and circulation;

- b. Shade for energy conservation and comfort is an integral part of the design;
- c. Materials are of superior quality and compatible with the surroundings;
- d. Buildings and landscape elements have proper scale with the site and surroundings;
- e. Large building masses are broken into smaller components that create a human-scale as viewed from the sidewalk;
- f. Buildings have a clear base and top, as identified by ground floor elements, roof forms, and detailing;
- g. Building facades have architectural detail and contain windows at the ground level to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility;
- h. Special treatment of doors, windows, doorways and walkways (proportionality, scale, materials, rhythm, etc.) contributes to attractive public spaces;
- i. On-site utilities are placed underground;
- j. Clear and well lighted walkways connect building entrances to one another and to adjacent sidewalks;
- k. Accessibility is provided in conformance with the Americans With Disabilities Act. (ADA);
- l. Plans take into account pleasant and convenient access to multi modal transportation options, and support the potential for transit patronage;
- m. Vehicular circulation is designed to minimize conflicts with pedestrian access and circulation, and with surrounding residential uses. Traffic impacts are minimized, in conformance with City transportation policies, plans, and design criteria;
- n. Safe and orderly circulation separates pedestrian and bicycles from vehicular traffic. Projects should be consistent with the Tempe Pedestrian and Bicycle Facility Guidelines (See Appendix);
- o. Plans appropriately integrate crime prevention principles such as territoriality, natural surveillance, access control, activity support, and maintenance;
- p. Landscaping accents and separates parking, buildings, driveways and pedestrian walkways;

- q. Signs have appropriate scale, color, and design based on location, site use, adjacent buildings and signs; and
- 5. Lighting is compatible with the proposed building(s) and adjoining buildings and uses, and does not create negative effects; and
- 6. The applicant may be required to upgrade any existing development that does not comply with the applicable standards, in conformance with Section 3-500 Non-Conforming Situations.

Section 6-303 General Plan Amendment.

General Plan amendments shall be reviewed using the Legislative procedure (Section 6-207). Additional notification may be necessary for General Plan Amendments according to Arizona State Statute.

Section 6-304 Modify Approved Plan or Condition of Approval.

- A. **Purpose.** Section 6-304 allows an applicant to modify an approved plan or condition of approval when project needs change. This Section applies to all types of applications approved under this Code, except Planned Area Developments (PADs). PAD modifications shall additionally follow the provisions in Section 6-305C.
- B. **Procedure.** There are two types of modification procedures as follows:
 - 1. **Minor Modifications.** Minor modifications are processed through an Administrative Review by the Development Services Manager. Minor modifications include:
 - a. An increase in the floor area proposed for non-residential use by less than 10 percent where previously specified;
 - b. A reduction of less than 10 percent of the area reserved for landscaping, open space, or outdoor living area;
 - c. A change to specified setback, building height, lot coverage or other quantitative requirements established in a PAD by less than 10 percent; or
 - d. Changes similar to those listed in subsection (a) through (c), that are not likely to have an adverse impact on adjoining properties, as determined by the Development Services Manager. Increases in the number of dwelling units and changes in the type and/or location of access-ways, drives or parking areas that affect off-site traffic are not eligible for review as a minor modification.

2. Major Modification. A major modification is a significant change that exceeds the threshold(s) provided for minor modification under Section 6-304B.1. Major modifications shall be processed as Public Hearing applications. The hearing body shall be the same as hearing body that made the original decision of approval.
3. See Appendix for submittal requirements.

C. Approval Criteria.

1. The approval criteria for major modifications are the same as for the original decision, except that a request to remove condition(s) of approval shall only be granted if the decision body determines that:
 - a. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of conditions; or
 - b. The condition could not be implemented because it is beyond the reasonable control of the applicant and the modification will not require a significant modification of the original decision; or
 - c. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
 - d. A different condition(s) would better accomplish the purpose of the original condition.
2. Minor modifications are administrative decisions and shall be approved by staff when they meet the basic thresholds defined in Section 6-604B.1, and when approval does not cause a violation of any provision of this Code.

Section 6-305 Planned Area Development.

- A. **Purpose.** Planned Area Developments (PADs) allow an applicant maximum flexibility in designing quality residential, commercial, mixed-use, or industrial developments, which could not be achieved by strict adherence to the terms of this Code. Requests for adjustments to terms of this code shall be permitted without requiring separate variance application(s), except that adjustments to densities and uses are not permitted. A PAD shall be considered a form of subdivision (with site and design review) and shall, therefore, conform to both the requirements set forth in the "Subdivisions" chapter of the Tempe City Code (Chapter 31) and to regulations of this Code. The plans required for PAD approval, therefore, shall be the same as for subdivisions at specified stages in the processing of such proposals.
- B. **Procedure – Preliminary PAD.** The preliminary PAD request shall be heard by the Planning and Zoning Commission or Redevelopment Review Commission using a

Public Hearing procedure and may be heard by the City Council. A recommendation of approval of a preliminary PAD request by the commission shall be based on the criteria in Section 6-305C. Upon making a recommendation on the Preliminary PAD, the commission shall forward the PAD to the council within one year of the commission action. The council shall approve, approve with conditions, or deny the PAD in a public meeting, unless on appeal from the commission, in which case the council shall hear the appeal in a public hearing. Any modifications to an approved preliminary PAD request shall be reviewed by the Planning and Zoning Commission and City Council. If recordation fails to occur, as noted in Subsection G below, the approval shall be null and void.

- C. Application Requirements – Preliminary PAD.** Requests for a PAD approval as required in this Section shall be submitted to the Development Services Department, on the application form provided by the Development Services Manager, and shall be accompanied by a site plan and details as specified in the Appendix (Application Submittal Requirements). A preliminary PAD request shall show locations of all buildings, typical groups of buildings, garages or parking areas, driveways and access ways, all elevations of buildings to be erected on the site, and the proposed use of all land. The preliminary PAD request shall also list proposed code adjustments, the total number of acres in the proposed project and percentages thereof designated for residential use and for other permitted recreational and nonresidential uses. PADs proposed for residential uses shall show locations and types of dwellings, including typical floor plans and elevations. A tabulation of proposed density shall also be shown. See Appendix for submittal requirements.
- D. Approval Criteria – Preliminary PAD.** Approval of a preliminary PAD requires conformance with the standards and guidelines in subsections 1-7, below. The decision-making body may impose reasonable conditions to ensure conformance with these provisions:
1. The allowable land uses in Part 3;
 2. The development standards in Part 4;
 3. Any applicable overlay zone provisions in Part 5;
 4. Tempe City Code Chapter 31, Subdivisions;
 5. The Design Guidelines contained in the Appendix; and
 6. The applicant may be required to upgrade any existing development that does not comply with the applicable standards, in conformance with Section 3-500 Non-Conforming Situations.
- E. Approval Criteria and Procedure – Final PAD.** When development is proposed, a final plan of development shall be prepared in conformance with the approved preliminary PAD and shall show the actual locations and dimensions of buildings, parking areas, loading and refuse areas, access ways, accessory buildings, landscaping, street improvements, open spaces and all elevations, as applicable. In

addition, the final PAD request shall meet all requirements of Tempe City Code, Chapter 31, Subdivisions, and be subject to Development Plan Review in conformance with Section 6-302 prior to issuance of building permits. Either the preliminary or final PAD request may be presented to the council and recorded as specified Section 6-305G.

- F. Modifications.** Once a PAD request has been approved and recorded, it can be modified with the approval of the Zoning Administrator, as long as the basic intent has not changed. A PAD can be amended, changed, or modified only through the procedure herein:
1. For modifications pertaining to an individual lot or dwelling unit, that are not in conflict with this Code or modifications granted by the City Council or council imposed condition, the request shall require the written approval of the Zoning Administrator using the minor modification (Administrative) procedure;
 2. For modifications pertaining to an individual lot or dwelling unit that are in conflict with this Code or modifications granted by the City Council shall require approval using a Public Hearing procedure.
 3. For modifications pertaining to the overall development, the request shall require the approval of the City Council, or a new application subject to review by the commission, using the Legislative procedure; and
 3. Questions as to procedure for modifications to existing PADs shall be determined by the Zoning Administrator.
- G. Recordation.** After adoption by the City Council, and compliance with all modifications, the approved preliminary or final PAD request shall be deemed an official PAD, and the city clerk shall place the plan of record in the office of the county recorder of Maricopa County. Recordation shall occur within one year of the council's adoption. Failure to be recorded within one year of approval, when due to the applicant's request, action or inaction, shall render such PAD null and void. The PAD shall not be void if, in the opinion of the council, the applicant is making a good faith effort toward recordation or the applicant has applied for an extension under Section 6-903.
- H. Property Owners Associations.** When the PAD property owners association(s) are formed, the covenants and restrictions shall include all applicable requirements under the Tempe City Code, and shall be reviewed by the city attorney and Development Services Manager to determine if the association will remain responsible for maintaining common areas within the development. Such covenants and restrictions shall be recorded with the final PAD request.

Section 6-306 Site Plan Review.

- A. **Purpose.** Site Plan Review is intended to encourage, protect and enhance the public health, safety, and welfare through site development design. The City recognizes that the creation of a desirable environment throughout the City for residents, businesses, and industry is a prime requisite for the preservation of property values; for the development of functional and compatible uses and development; and for the preservation of public health, safety and general values.
- B. **Procedure.** Minor Site Plan applications consist of less than 10,000 square feet of site area are reviewed administratively by the Development Services Manager or his or her designee. Major Site Plan applications consist of 10,000 square feet or more site area and are reviewed in a public hearing by the Planning and Zoning Commission.
- C. **Application Requirements.** See Appendix for submittal requirements.
- D. **Approval Criteria.** Site Plan approval requires conformance with the standards and guidelines in subsections 1-7, below. The decision-making body may impose reasonable conditions to ensure conformance with these provisions:
 - 1. The provision of adequate infrastructure, including streets, pedestrian ways, water, sanitary sewer, storm water drainage and retention. All development shall comply with City standards for the same;
 - 2. The allowable land uses in Part 3;
 - 3. The development standards in Part 4;
 - 4. Any applicable overlay zone provisions in Part 5;
 - 5. The following design guidelines:
 - a. The placement of buildings, drives, parking, refuse storage, pathways, lighting, and landscaping, supports the use of the streetscape, outdoor living areas, common areas, and other public and semi-public areas;
 - b. The plan maximizes natural surveillance and visibility of pedestrian areas (building entrances, pathways, parking areas, etc.), enhances the character of the surrounding area, and facilitates pedestrian access and circulation;
 - c. On-site utilities are placed underground;
 - d. Clear and well lighted walkways connect building entrances to one another and to adjacent sidewalks;
 - e. Shade for energy conservation and comfort is an integral part of the site design;

- f. Accessibility is provided in conformance with the Americans With Disabilities Act (ADA);
 - g. Plans take into account pleasant and convenient access to multi modal transportation, and support the potential for transit patronage;
 - h. Parking and vehicular circulation are designed to minimize conflicts with pedestrian access and circulation and with surrounding uses. Traffic impacts are minimized, in conformance with City transportation policies, plans, and design criteria;
 - i. Safe and orderly circulation separates pedestrian and bicycles from vehicular traffic. Projects should be consistent with the Tempe Pedestrian and Bicycle Facility Guidelines (see Appendix);
 - j. Plans appropriately integrate crime prevention principles such as territoriality, natural surveillance, access control, activity support, and maintenance;
 - k. Landscaping accents and separates parking, buildings, driveways and pedestrian walkways;
6. Lighting is compatible with the proposed building(s) and adjoining buildings and uses, and does not create negative effects; and
7. The applicant may be required to upgrade any existing development that does not comply with the applicable standards, in conformance with Section 3-500, Non-Conforming Situations.

Section 6-307 Use Permit.

- A. **Purpose.** The purpose of Section 6-307 is to ensure the orderly use of land in conformance with the General Plan and applicable city standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses.
- B. **Applicability – Square Feet of Use.** For use permits that are based on the square footage devoted to a particular use, the square footage will be taken as the gross floor area for the use requiring the use permit.
- C. **Use Permits Granted by the Hearing Officer or Board of Adjustment.** The following requests for use permits shall be taken to the Hearing Officer or Board of Adjustment for a public hearing, and approval, denial, or approval with conditions:
- 1. All use permits required in all residential districts (Section 3-101 et seq. of this Code);

2. Use permits required for any bar which occupies less than four thousand five hundred (4,500) square feet in gross floor area;
3. Use permits required for any other use which occupies less than ten thousand (10,000) square feet in gross floor area in all commercial and mixed-use districts (Section 3-201 et seq. of this Code) except PCC-1 and PCC-2;
4. Use permits required for any use occupying less than twenty-thousand (20,000) square feet in gross floor area in any office/industrial district (Section 3-301 et seq. of this Code);
5. The Zoning Administrator may direct that a request defined by paragraphs 1 through 4 immediately above be heard instead by the City Council based on a review which includes but is not limited to the following factors:
 - a. Previous decisions by the City regarding the site on which the proposed use is located;
 - b. The probable impact of the requested use on its immediate surroundings; or
 - c. The consistency of the requested use with the projected land uses, policies and principles of General Plan.
6. When a use permit is combined with a variance both shall be heard by the same decision-making body.

D. Use Permits Granted by Redevelopment Review Commission or City Council. The following requests for use permits shall be taken to the City Council for a public hearing, and approval, denial, or approval with conditions:

1. All use permits required in PCC-1, PCC-2 and RCC;
2. Use permits required for any bar which occupies four thousand five hundred (4,500) square feet or more in gross floor area;
3. Use permits required for any other use in a commercial or multi-use zone which occupies ten thousand (10,000) square feet or more in gross floor area;
4. Use permits required for any use that occupies twenty thousand (20,000) square feet or more in gross floor area in every industrial zone. For use permits to exceed the allowed percent of retail in an industrial district, the square footage devoted to retail will be taken as the gross floor area for the use requiring the use permit;
5. All use permits required in the CC and R zones; and
6. When a use permit is combined with a variance both shall be heard by the same decision-making body.

- E. **First Amendment.** A use permit request for any activity that is protected by the First Amendment shall be heard by the hearing officer or Board of Adjustment at the next regularly-scheduled public hearing complying with legal notice requirements following submittal of a complete application for such a permit. No continuances or other delays in such processing may occur without the concurrence of the applicant for such permit, provided that there is sufficient time to complete any public notification requirement. If approved, the use shall be commenced within one year.
- F. **Approval Criteria.**
1. A use permit shall be granted only upon a finding by the hearing officer, board or City Council that the use covered by the permit, the manner of its conduct, and any building which is involved will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefor by this Code.
 2. In arriving at the above determination, the following factors shall be considered, but not be limited to:
 - a. Any significant increase in vehicular or pedestrian traffic;
 - b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or general plan;
 - d. Compatibility with existing surrounding structures and uses; and
 - e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.
- G. **Burden of Proof.** The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. A refusal of a use permit shall not be interpreted as the denial of a right, conditional or otherwise.
- H. **Conditions.** Any use permit granted may be subject to such conditions as the hearing officer deem applicable in order to fully carry out the provisions and intent of the Code, including, but not limited to:
1. Limit the hours, days, place and/or manner of operation;

2. Require site or architectural design features that minimize impacts due to removal of vegetation, noise, vibration, exhaust/emissions, light, glare, erosion, water quality impacts, odor and/or dust;
3. Require landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
4. Designate the size, number, location and/or design of vehicle access points or parking areas;
5. Require screening or landscaping and the establishment of standards for their installation and maintenance;
6. Require and designate the size, height, location and/or materials for fences and/or walls;
7. Require the protection and preservation of existing trees, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands, as identified by a qualified professional;
8. Limit access to streets;
9. Require additional setbacks and planting if deemed necessary;
10. Limit the hours, days, place and/or manner of operation;
11. Require site or architectural design features that minimize impacts due to removal of vegetation, noise, vibration, exhaust/emissions, light, glare, erosion, water quality impacts, odor and/or dust;
12. Limit the building height, size or lot coverage, and/or location on the site;
13. Designate the size, number, location and/or design of vehicle access points or parking areas;
14. Require street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;
15. Require landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
16. Limit the number, size, location, height and/or lighting of signs beyond the base sign regulations of this Code;
17. Limit or set standards for the location, design, and/or intensity of outdoor lighting beyond those in the base regulations of this Code;
18. Require screening or landscaping and the establishment of standards for their installation and maintenance;

19. Require and designate the size, height, location and/or materials for fences and/or walls;
20. Require the protection and preservation of existing trees, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands, as identified by a qualified professional; and
21. Other conditions similar to those listed in 1-20, above, to mitigate impacts in conformance with this Section.

I. Effect of Use Permit, Use Modifications, Limitations.

1. The use permit is valid and operable only for the specific use as granted and subject to any specified time limit. No use may be modified, changed, altered or increased in intensity, in a manner that conflicts with the use permit and/or required conditions of approval, without approval of a new use permit.
2. The hearing officer, board or commission may grant a use permit for a modified, changed, altered or increased use upon approval of a modification, in conformance with Section 6-606. If modifications, changes, alterations or increases are made to use subject to a permit prior to reapplication, the applicant shall pay an application fee that is two (2) times the amount as adopted by the City Council. This additional application fee shall be in addition to any penalties imposed under this Code and under general principles of law for operating without a valid use permit and in violation of this Code.

J. Use Permit Valid for One Year. Use permits shall be void if the use is not commenced within twelve (12) months of such granting or within the time stipulated by the decision-making body.

K. Exceptions and Special Use Permit Provisions. Outdoor retailing related to special sporting events. Outdoor displays and outdoor retailing of merchandise related to special sporting events, as defined below, may be allowed on commercially used property in the CSS, PCC-1, PCC-2, CC, and RCC districts on a temporary basis, and without a use permit, if:

1. A temporary sports paraphernalia vending permit has been issued by the Management Services Department, after approval by the development services and Public Works Departments, for a fee established by the City Council;
2. The permittee is in compliance with all regulations related to such permit and all applicable codes and laws;

3. Each temporary permit is valid for a period not to exceed thirty (30) days, one of which days includes the date of a special sporting event as defined herein. The permit must be posted on the site and must be available for inspection at all times during operation;
4. Merchandise is limited to tangible personal property related to the special sporting event and shall comply with all applicable licensing, trademark, copyright or other requirements of law. It may not include food or beverage products;
5. The applicant submits a written application and site plan for review and approval by the City, which shall include, but not be limited to layout, location, size, height, signage, description of merchandise, date and name of the special sporting event, off-street parking and traffic plan, utility services to be utilized or required, improvements and structures on the site, approval of property owner for the intended use, the permit fee and sales tax license fee, and other information requested by the City. In reviewing applications, the City may utilize any acceptable criteria for approval of the application and site plan, including such criteria as those utilized for issuance of use, signs, traffic or right-of-way permits, and other vending or licensing standards currently established by city Code and administration. Except for city-owned property, the following requirements apply:
 - a. Display or retail activities shall be conducted at least ten (10) feet away from any public property or city right-of-way;
 - b. No traffic or sight obstruction or restriction is permitted;
 - c. Display or retail activity may only occur on an improved area adjacent to an existing permanent structure on the site. "Improved area" is defined as an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border, unless otherwise approved by the City;
 - d. No display or retail activity may occur upon or interfere with landscaping at or adjacent to the site;
 - e. A copy of approved tent permit, if applicable, and any other required city permits or licenses;
 - f. No permit will be issued for, nor will outdoor display or retailing be allowed on, any property abutting or within the area bounded by Priest, McClintock, Rio Salado Parkway and the Red Mountain Freeway, in the Rio Salado overlay district, unless otherwise approved by the city;
 - g. No outdoor retail or display is permitted during or within the perimeters of the New Year's Eve Block Party or the Super Bowl Street Spectacular unless approved as part of the special event permit for those events;

- h. Display or retail area shall be kept neat, clean and hazard free during any hours of operation. Permittee is responsible for litter pickup and disposal within a fifty (50) foot circumference of the display/retail activities; and
- i. Special sporting event means the Fiesta Bowl, the Super Bowl, the playoffs for professional basketball, football or baseball, or any other special sporting event so designated by the City Council.

City code reference—See TCC §5-2, special event permits.

Section 6-308 Zone Map Amendment.

- A. **Purpose.** The regulations and boundaries of zoning districts set forth in this Code may be amended whenever deemed necessary to best serve the public interest, and the health, comfort, convenience, safety, and general welfare of the City. Amendments to the text or zoning map of this Code shall not be made except through the adoption of an amending code by the City Council and following the procedure prescribed in this Code.
- B. **Application Requirement.** An application for zone map amendment shall be made as a written request submitted to the Zoning Administrator. The written request shall specify the nature of the amendment with pertinent details to explain or support the request.
- C. **Planning and Zoning Commission Review and Recommendation.** Requests for such amendments shall be taken to the Planning and Zoning Commission by the owner or owners of real property situated in the city by any officer, department, board or commission of the city, or by the City Council, under its own motion. The commission shall review the request and make a recommendation to City Council in a public hearing. The recommendation of approval of any amendment by the commission shall be based on a finding of consistency and conformance with the General Plan.
- D. **City Council Review and Adoption.** Adoption by the council of an amendment shall be based on a finding that the zoning amendment is in the public interest and is consistent and conforms with the General Plan. Any recommendation of approval for an amendment, or any adoption by the council of an amendment, may be subject to such conditions as the commission or council deem applicable in order to fully carry out the provisions and intent of this Code.

State law reference—Zoning amendments, procedures, A.R.S. §9-462.01, §9-462.03, §9-462.04.

Section 6-309 Security Plan.

- A. Purpose.** The purpose of Security Plan approvals is to protect the public health, safety, and welfare through crime prevention measures that are tailored to proposed land uses.
- B. Applicability.** Prior to commencement of any of the following uses, a Security Plan must be approved in accordance with Chapter 11, Article III of Tempe City Code:
1. Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;
 2. Adult-oriented businesses;
 3. Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and penny arcades;
 4. Entertainment as accessory to restaurant facilities, bars or similar establishments;
 5. Hotels, motels;
 6. Convenience stores; and
 7. Any other use determined by the Development Services Manager or the Tempe police department to be similar to a use listed immediately above in 1-6.
- C. Procedure and Approval Criteria.** Prior to commencement of any of the uses in 6-309B, a Security Plan must be approved in accordance with the criteria and procedures in Chapter 11, Article III of Tempe City Code.

Section 6-310 Parking Demand Study.

An applicant for any commercial, industrial, civic, or mixed-use project may request approval of alternative parking space requirements using a Parking Demand Study. The application procedures, methodology, specifications, and approval criteria for parking demand studies are provided in the Appendix. See also, Section 4-601 et. seq.

Section 6-311 Variances.

- A. Purpose.** Section 6-311 provides for relief from the standards of this Code when needed because of circumstances applicable to a property, including its size, shape, topography, location or surroundings, where the strict application of this Code would deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.

- B. Applicability.** Variances are applicable to quantified standards (e.g., setbacks, height, lot areas, dimensions, etc.) and non-quantified standards. Variances are not applicable to guidelines as specifically identified in this Code. Any variance granted shall not:
1. Make any changes in the uses and densities permitted in any zoning classification or zoning district;
 2. Be for the purpose of rectifying a special circumstance, which was self-imposed by the property owner or applicant; or
 3. Allow relief from any item expressly prohibited by this Code.
- C. Procedure.** Requests for variances from the terms of this Code may be taken to the Hearings Officer and, if appealed or protested, to the Board of Adjustment. The decision body shall review the request and make a decision in a public hearing.
- D. Decision Bodies.** The Hearing Officer, Board of Adjustment, Planning and Zoning Commission, Redevelopment Review Commission, and City Council may hear variances. When a use permit or a site plan is combined with a variance both shall be heard by the same decision-making body.
- State law reference**—Variances, power to grant, A.R.S. §9-462.06.
- E. Approval Criteria.** A variance shall not be authorized unless the decision body shall find upon sufficient evidence:
1. That there are special circumstances or conditions applying to the land, building or use referred to in the application;
 2. That the authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights; and
 3. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.
 4. That the applicant for a sign variance has received Development Plan Review approval prior to a decision being made on the variance.
- F. Conditions of Approval.** Any variance granted may be subject to such conditions deemed applicable by the decision body as will assure that the adjustment authorized shall not be detrimental to other properties in the vicinity and zone in which such property is located. Variances shall become void if the subject property does not conform to all conditions, requirements, and standards prescribed by the decision body as a condition for approval of the variance. See also, Section 6-904, Revocation.

- G. Time Limitations.** Variances shall be void if the use is not commenced or if a building permit has not been obtained within twelve (12) months of such granting or within the time stipulated by the hearing officer or board. A variance may be granted for a limited time period in situations where circumstances affecting the factors listed in subsection E or F of this Section are subject to change. A variance shall be valid for the time period stipulated by the decision body, unless extended in conformance with Section 6-903, and shall only be renewed upon approval of a new variance application.

Chapter 4 – Public Notice and Staff Reports

Section 6-401	General Provisions.
Section 6-402	Neighborhood Meetings.
Section 6-403	Notice for Public Meetings.
Section 6-404	Notice for Public Hearings.
Section 6-405	Notice of Appeals.
Section 6-406	Staff Reports.

Section 6-401 General Provisions.

- A. **Mailed Notices.** Notices mailed under provisions of this Code shall be mailed to property owners and tenants within the notified area, as defined in Section 6-401B. Except for neighborhood meeting notice, The City is responsible for mailing public notices under this Code. The City is not responsible for receipt of mailed notices by property owners or tenants on the same property, if any.
- B. **Notified Area.** For notice purposes, the boundary of the subject property(ies), including the parcel on which a use is located, shall be used in determining the geographic area to be notified. The Development Services Manager, at his or her discretion, may require that the subject property(ies), together with all contiguous property under identical ownership, shall be the basis for determining the geographic area for notice, when the proposed use or development is likely to affect that larger area.

Section 6-402 Neighborhood Meetings.

- A. **Purpose.** The purpose of the neighborhood meeting is to provide a means for the applicant, surrounding neighbors, and registered neighborhood and homeowner's association representatives to review a preliminary development proposal. This preliminary meeting is intended to result in an application that is more responsive to neighborhood concerns and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands or denials. The applicant is responsible for all costs associated with the neighborhood meeting.
- B. **Applicability.** Applicants are required to meet with adjacent property owners and neighborhood representatives prior to the first hearing to solicit input and exchange information about the proposed development. The Development Services Manager, at his or her discretion, may waive the meeting requirement. A neighborhood meeting is required for the following types of applications:

1. Use permits
 2. Variances
 3. Development Plans, when a public hearing is required.
 4. Planned Area Developments;
 5. Major modification to an approved plan or condition of approval (when original approval made at a public hearing)
 6. Zone Map Amendments and General Plan Map Amendments.
- C. Meeting Schedule.** The applicant is required to hold one meeting, prior to the first hearing on an application for a specific site, but may hold more if desired. The required meeting shall be held at least two (2) weeks before the first hearing on the application.
- D. Meeting Location.** Neighborhood meetings shall be held at a location near the proposed development site. The meeting shall be held on a weekday evening, or weekends at any reasonable time and in a publicly accessible location.
- E. Mailing Notice.** Mailed notice of the meeting shall be provided by the applicant to: all property owners within three hundred (300) feet of the proposed site, and the chairperson(s) of the affected neighborhood association(s) and home owners association(s) not less than fourteen (14) days prior to the meeting. The applicant shall also post notice of the neighborhood meeting not less than fourteen (14) days in advance of the meeting by posting a sign on the subject site where it is visible from the most heavily traveled abutting public street. The Development Services Department shall supply the sign at cost.
- F. Meeting Summary.** The applicant shall submit to the Development Services Department before the first hearing on the matter a summary of the issues and discussions from the meeting and the meeting notes.

Section 6-403 Notice for Public Meetings.

- A. Agenda as Notice of Meeting.** Agendas for all public meetings shall be posted at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law.
- B. Notice of Decision.** Written notice of the decision made by the decision-making body in a public meeting shall be provided to the applicant and property owner (if different) and made available for public inspection at the Development Services Department.

Section 6-404 **Notice for Public Hearings.**

- A. **Public Notice.** Public hearings shall be preceded by public notice in accordance with Section 6-403 and Arizona open meeting law. When multiple applications are under review for the same project, the City may simultaneously issue notice for multiple applications. Such notice may be given in the initial posting and of the initial hearing and any subsequent hearing.

- B. **Agenda.** Upon receiving a complete application for action requiring a public hearing under this Code, the Development Services Manager shall place the request upon the next available agenda for a regular meeting of the hearing body.

- C. **Notification Requirements.** If notification is required at the City Council, the city clerk shall submit for publication in the official newspaper the request, at least once, fifteen (15) days prior to the meeting. If an Code amendment is involved, the city clerk shall comply with the requirements of the city charter. The Development Services Department shall issue public notices for all other types of hearings under this Code by:
 - 1. Posting the agenda at City Hall at least twenty four (24) hours prior to such meetings, in accordance with Arizona open meeting law;

 - 2. Erecting not less than fifteen (15) calendar days prior to the dates of public hearings, a notice of the date, time and place of each public hearing and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a public street or road. It shall not be the responsibility of the city to maintain the notice once it has been placed on the subject property;

 - 3. Submitting for publication in the official newspaper the hearing notice, at least once, fifteen (15) days prior to the public hearing; and

 - 4. Mailing a hearing notice not less than fifteen (15) calendar days prior to the date of each hearing to:
 - a. The applicant or representative and owners of the subject property;

 - b. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant; and

 - c. The chairperson of the registered neighborhood association(s) and home owners association(s) in which subject property is located.

- D. **Content of Public Hearing Notice.** Public hearing notices issued under Section 6-403C shall contain:
 - 1. The name of the applicant or owner;

2. A description of the subject property reasonably sufficient to inform the public of its location;
3. A concise description of the proposed development or use; and
4. The designation of the hearing body and the time, date and place of the hearing.

E. Decision Notice. Written notice of the decision of the hearing body shall be provided to the applicant and property owner (if different). The notice of decision shall contain a brief summary of the decision and conditions of approval, if any.

Section 4-405 Notice of Appeals.

Notice of an appeal of a public meeting or public hearing shall be provided in the same manner as the original meeting or hearing.

Section 6-406 Staff Reports.

A. Staff Reports for Boards and Commissions, Except City Council. After any such request as provided in this Code has been placed on an agenda, the Development Services Department shall prepare a written report for the hearing body that includes the following information:

1. The name of the applicant or initiating party;
2. A description of the subject property or amendment;
3. A statement of the proposed request and any history pertinent to such request or property;
4. A statement of the observations of the personal inspection of the subject property and surrounding area; and
5. A recommendation for disposition of the request.

B. Staff Reports for City Council. Any request forwarded to the City Council shall be transmitted to the city clerk for inclusion on the agenda of a regular meeting of the City Council. A report shall accompany the request and include the following information:

1. A recital of the proposed request and the name of the initiating party;
2. A concise statement of history and facts on the processing of the request by the Development Services Department and the public hearing by the Planning and Zoning Commission;

3. The findings made by the Planning and Zoning Commission and the action taken;
4. A copy of the report to the Planning and Zoning Commission by the Development Services Department; and
5. Any other pertinent documents and maps, as well as other information deemed necessary by the City Clerk or Development Services Manager.

Chapter 5 – Public Hearings

- Section 6-501 Purpose.**
- Section 6-502 Rules of Procedure.**
- Section 6-503 Record.**
- Section 6-504 Procedural Rights.**
- Section 6-505 Presentations.**

Section 6-501 Purpose.

This Chapter provides procedures for public hearings. It is intended to provide an efficient and effective means of public review on land use and development decisions made by the City. The provisions set forth in this Chapter also are intended to encourage public dialogue and comment that is relevant to the applicable approval.

Section 6-502 Rules of Procedure.

Public hearings shall be conducted in accordance with Section 6-502 and any rules of procedure adopted by the hearing body, so long as these procedures do not conflict.

A. Hearing Procedure. The following procedures apply to all public hearings, except as provided for zoning amendment protests under Section 6-502D:

1. Call for the request as stated on the meeting agenda and announce that any person believed to be affected by the request may appear and will be heard, in person or by his representative;
2. Hear the report and recommendation submitted by the Development Services Department;
2. Hear a presentation by the applicant(s) describing the manner in which the proposal is consistent with City plans, policies, and codes;
4. Hear the relevant comments by the public regarding the application;
5. The presiding officer may allow further comment, exhibits, and other evidence to be filed as part of the record of the hearing; and
6. Hold any pertinent discussion necessary for clarification or additional information.

- C. **Decision.** Following discussion related to the application or comments received during the public hearing, the hearing body will approve, approve with conditions, continue, or deny the application. In making the decision, consideration shall be given to the facts presented. The findings of fact justifying the decision shall be noted for the record.
- D. **Zoning Amendment Protest.** The following procedure shall apply when a zoning amendment is protested:
 - 1. In the event that the owners of at least twenty percent (20%) of the following properties file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council;
 - a. the area of the lots included in a proposed change;
 - b. adjacent properties extending 150 feet from the side or rear property line of the subject property; or
 - c. properties directly opposite thereto extending one hundred and fifty (150) feet from the street frontage of the opposite lots.
 - 2. Proposed amendments shall require a favorable vote of three-fourths (3/4) of all members of the City Council to become effective if a valid protest is filed in writing against the proposed amendment with the city clerk prior to the time of or at the public hearing of the council.
 - 3. If any members of the council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

State law reference— A.R.S. §9-462.04(H).

- E. **Re-application – Waiting Period.** In the event that an application is denied, an application on the same subject matter will not be considered for a period of one year from the date the initial application was denied.

Section 6-503 Record.

- A. **Summary Minutes.** Written summary minutes and all other materials and correspondence submitted giving a reflection of the matters discussed during a public hearing shall be made.
- B. **Appeal Record.** When a decision is appealed, absent mechanical failure or inadvertent error, a verbatim written or mechanical record of the hearing shall be

made. Summary minutes shall be substituted for a verbatim record in the event of mechanical failure or inadvertent error.

Section 6-504 Procedural Rights.

Subject to the specific standards and limitations set forth in this Code, public hearings will incorporate the following procedures:

- A. **Applicant.** An applicant, or the applicant's representative(s), shall be afforded an opportunity to present the application to the hearing body;
- B. **Public.** Persons who may be affected by the decision shall be afforded a reasonable opportunity to present testimony or offer comment; and
- C. **Hearings Body.** Members of the hearings body shall be entitled to reasonable opportunity to ask questions of the public, applicant, or staff to clarify points or gain a better understanding of details pertinent to the application.

Section 6-505 Presentations.

- A. **Time.** The hearings body may set reasonable time limits for oral presentations. The hearing body may also determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the hearings body determines that a reasonable opportunity for oral presentations has been provided.
- B. **Close of Public Comment.** Public comment will not be accepted after the close of the public hearing unless the hearings body sets a deadline for such comment and provides an opportunity for review and rebuttal prior to making a decision.

Chapter 6 – Conditions of Approval

- Section 6-601 Conditions of Approval.**
- Section 6-602 Contract for Conditions.**
- Section 6-603 Assurance of Compliance with Conditions.**
- Section 6-604 Time Limits on Conditions.**
- Section 6-605 Failure to Fulfill Previous Conditions.**
- Section 6-606 Modification or Removal of Conditions.**

Section 6-601 Conditions of Approval.

The decision body may impose conditions on any approval. Such conditions shall be designed to implement the requirements of this Code, protect the public from potential adverse impacts from the proposed use or development, or to fulfill an identified need for public services. In addition to those conditions imposed by the decision body, the City may consider as a requirement or condition any plan, exhibit, statement, or other material provided by the applicant and on record with the decision.

Section 6-602 Contract for Conditions.

When the approval requires a contract, conditions shall be set forth in a contract executed by the City and the applicant and approved as to form by legal counsel for the City. If a contract is required, no approval shall be effective until the conditions are recorded. As a condition of approval, the City may require that the contract or a memorandum thereof be filed in the County Deed Records and shall appear in the chain of the title of the subject property, if recording is required. In addition to any personal remedy, the condition shall constitute a burden running with the land in favor of the City of Tempe and, unless otherwise provided, shall be removed only with the written authorization of the Tempe City Council. The contract shall be enforceable by and against the parties, their heirs, successors and assigns. The contract, however, shall not restrict the authority of the City of Tempe from taking actions affecting the property.

Section 6-603 Assurance of Compliance with Conditions.

A bond, cash deposit or other security acceptable to the decision body may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval.

Section 6-604 Time Limits on Conditions.

Conditions shall be fulfilled within the time limitations set forth or a reasonable time if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation or such other enforcement action as the City deems appropriate.

Section 6-605 Failure to Fulfill Previous Conditions.

The decision body may withhold a permit if it determines that the applicant has an unfulfilled condition or requirement from a previous approval, and withholding the permit would encourage compliance or is necessary to protect the public from future noncompliance.

Section 6-606 Modification or Removal of Conditions.

Modification or removal of conditions of approval may be sought on appeal or as a new application, in accordance with Section 6-304. Such proposals shall be processed through the same procedure as was used to impose the conditions.

Chapter 7 – Reconsideration of Decisions

Section 6-701	Reconsideration as Extraordinary Remedy.
Section 6-702	Motion for Reconsideration.
Section 6-703	Motion for Reconsideration and Appeal Period.
Section 6-704	Motion for Reconsideration as Nonpublic Hearing Item.
Section 6-705	Process for Reconsideration.
Section 6-706	Reconsideration and Appeals.
Section 6-707	Reconsideration Limit.

Section 6-701 Reconsideration as Extraordinary Remedy.

Reconsideration of a decision is available only as an extraordinary remedy upon a determination by the decision body that the criteria in subsections A and B are met:

- A. Mistake.** The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred; and the alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- B. Hardship or Delay.** Reconsideration is appropriate to avoid delay or hardship that may be caused by an appeal.

Section 6-702 Motion for Reconsideration.

A motion for reconsideration must be filed with the Development Services Manager within seven (7) calendar days of the date the notice of decision is provided. The motion shall address the factors set forth in Section 6-701 above. The applicable fee shall be submitted with the request. A motion for reconsideration may be filed by the applicant, the Development Services Manager, or a party of record.

Section 6-703 Motion for Reconsideration and Appeal Period.

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Chapter 8. If the decision body grants reconsideration,

and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

Section 6-704 Motion for Reconsideration as Nonpublic Hearing Item

Within seven (7) calendar days, the Development Services Manager shall issue a written notice of the decision to grant or deny the motion for reconsideration to the party requesting reconsideration. The decision as to whether to reconsider is not subject to appeal. A motion to reconsider a decision may be considered as a non-public hearing item at a public meeting of the decision body. If more than one petition for reconsideration is received in the seven (7) calendar day period provided in Section 6-704, the petitions shall be consolidated and reviewed as a non-public hearing item.

Section 6-705 Process for Reconsideration.

The decision body shall schedule and notify the parties of a new public hearing on the merits of the issues raised. The reconsideration of the decision shall be limited to the issues raised in the motion for reconsideration and the merits of the issues raised. Such hearing shall be held at the next reasonably available opportunity. The hearing shall be conducted as a hearing on the record and new evidence or testimony shall be limited to grounds upon which the motion or petition for reconsideration was granted.

Section 6-706 Reconsideration and Appeals.

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal timely filed shall be processed in accordance with Chapter 8 – Appeal. If the motion is granted and the decision body modifies the previous decision, the parties to the initial decision shall be notified within ten (10) days of the decision and may appeal the decision as modified pursuant to Section Chapter 9.

Section 6-707 Reconsideration Limit.

No decision shall be reconsidered more than once.

Chapter 8 – Appeals

- Section 6-801** **Parties to an Appeal.**
- Section 6-802** **Appeal of Hearings Officer or Director Decision.**
- Section 6-803** **Appeal of Planning Commission Denial.**
- Section 6-804** **Appeal of Board of Adjustment Decision.**
- Section 6-805** **Appeal of Design Review Board Decision.**
- Section 6-806** **Appeal of Council Decision.**
- Section 6-807** **Appeal Petition.**

Section 6-801 **Parties to an Appeal.**

Any person, entity, or group aggrieved by a decision under this Code may be parties to an appeal hearing as provided in Sections 6-802 through 6-807.

Section 6-802 **Appeal of Hearings Officer or Director Decision.**

Need written response of formal decision from date of the hearing for all appeals. Revisions to appeal deadlines made within 15-30 days for date of Board Decisions.

- A. Hearings Officer - Who May Appeal.** Any person aggrieved by any decision of the Hearing Officer may appeal the decision to the Board of Adjustment by filing notice to the Development Services Department within seven (7) calendar days of the date of the decision.
- B. Zoning Administrator – Who May Appeal.** Appeals may be taken to the Board of Adjustment by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the Zoning Administrator within thirty (30) days by filing a notice of appeal with the Zoning Administrator and with the board specifying the grounds thereof. The Zoning Administrator shall transmit all records upon which the action appealed from was taken. Such appeal shall be filed on forms provided by the Development Services Department.
- C. Public Hearing.** The appeal shall be heard using the public hearing procedures in Section 6-501 et seq.
- D. Appeal Stays Proceedings.** An appeal shall stay all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the board that, by

reason of the fact stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by the board or by a court of record on application and notice to the Zoning Administrator.

- E. Conditions When Granting Appeal.** Any appeal granted may be subject to such conditions as the board deems applicable.

Section 6-803 Appeal of Planning Commission Denial

- A. Appeal to City Council.** If any approval or denial (“decision”) of the commission, or any portion thereof, is appealed to the council, such an appeal shall be filed within ten (10) calendar days of the date of such action by the commission. The City Council shall set a public hearing on the appeal and a public hearing on the initial request. Both public hearings shall be conducted in conformance with the procedures in Section 6-501 et seq. and may be held at the same meeting. This section is not applicable to commission recommendations.
- B. Requests Initiated by City Council.** If the decision of the commission is for denial of a request initiated by the council, the request shall be placed on the agenda of a regular council meeting for introduction. The appeal shall then be processed according Section 6-501 et seq.

Section 6-804 Appeal of Board of Adjustment Decision.

Any person or municipal officer aggrieved by any decision of the Board of Adjustment may appeal by filing an action with Maricopa County Superior Court within thirty (30) days of the date of the decision.

State law reference – Persons may appeal Board of Adjustment decision to City Council, A.R.S. Section 9-462.06.

Section 6-805 Appeal of Design Review Board Decision.

Any person aggrieved by any decision of the Design Review Board may appeal by filing a petition with City Council within ten (10) days of the date of the decision.

Section 6-806 Appeal of Council Decision.

Appeal of City Council decisions must be filed with Maricopa County Superior Court within thirty (30) days of the date of the council decision.

State law reference – Persons may appeal local government decision to ___, A.R.S. Section 9-462.06.

Section 6-807 Appeal Petition.

- A. **Petition Criteria.** To effect an appeal, the petitioner must file an appeal petition with *the Development Services Department/City Clerk* not later than 5:00 p.m. on the appeal due date, as provided on the Notice of Decision. The petition shall contain:
1. The name of the applicant and the City case file number;
 2. The name and signature of each petitioner and statement of the interest of each petitioner to determine party status. Multiple parties may join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Department. All Department communications and correspondence regarding the petition shall be with this Contact Representative;
 3. The date that notice of the decision was sent as specified in the notice;
 4. The nature of the decision and the specific grounds for appeal. Unless otherwise directed by the appellate authority, the appeal shall be limited to the issue(s) raised in the petition;
 5. The number of pages of the petition and a statement that all pages are present (if more than one page of signatures); and
 6. The petition for review shall be submitted with the appeal fee specified in the Notice of Decision to be paid by cash, check or money order.
- B. **Failure to File a Petition.** Failure to file a petition for review with the Development Services Department by 5:00 p.m. on the due date, with the fee specified in the Notice of Decision, shall be a jurisdictional defect. Failure to amend a petition to correct any identified deficiency in it within seven (7) calendar days of notice thereof shall be a jurisdictional defect.

Chapter 9 – Effective Date, Expiration, Extension, Revocation, and Transfer of Approvals

Section 6-901 Effective Date of Decisions.

Section 6-902 Expiration.

Section 6-903 Extension.

Section 6-904 Revocation of a Permit.

Section 6-905 Transferability of Permits.

Section 6-901 Effective Date of Decisions.

Decisions made under the provisions of this Code are effective on the date of approval (unless conditioned otherwise), except for those decisions subject to referendum. In the event that a decision made under this Code is appealed, the appeal does not invalidate the approval. The holder of the permit approval may proceed with a use or development at his or her own risk.

Section 6-902 Expiration.

Development permits issued under this Code shall expire automatically one (1) year from the date of issuance if the permit holder has not commenced the subject use or development. If the City's decision is appealed, the one-year permit period shall be extended to begin after the final appeal is resolved.

State Statute Reference: A.R.S. ____.

Section 6-903 Extension.

- A. Timing of Extension.** If an extension is desired, the permit holder must file an application for an extension no later than thirty (30) days prior to expiration of the approval.
- B. Procedure and Approval Criteria.** Extension requests shall be processed by the Development Services Manager as a Administrative (Type A) decision. The Development Services Manager may refer the request to the decision body that issued the original approval if different than the Development Services Manager. An extension may be granted for a maximum of one (1) year from the original date of expiration, and may be less than one (1) year if the Manager deems that a shorter timeframe is warranted. Extensions shall be granted only upon findings that:

1. The use or development could not reasonably commence for reasons beyond the control of the permit holder;
2. The request for extension is not sought for purposes of avoiding the requirements or standards of this Code or the permit;
3. There has been no change in City standards or other circumstances likely to necessitate significant modification of the development approval or conditions of approval; and
4. The use of property, if any, conforms to applicable City Codes. The City may deny an extension request if there is an existing Code violation, or impose conditions to facilitate compliance.

Section 6-904 Revocation of a Permit.

The City may revoke an approval or permit granted under this Code. In revoking an approval or permit, the following procedures apply:

- A. **Procedure and Criteria.** Following reasonable notice to the permit/approval holder an administrative hearing shall be held to consider all relevant information, conditions, and concerns related to the permit. The permit/approval holder will be given a reasonable opportunity to resolve all related issues. If the permit/approval holder cannot comply with conditions of the permit/approval or otherwise remains in violation of this Code after thirty (30) days, or sooner when the violations constitute an immediate public health, safety and general welfare concern, the Zoning Administrator shall schedule the item on the next regularly scheduled agenda of the board of appeals or City Council, as may be appropriate, at which time revocation of the permit/approval may be considered. A permit/approval may be revoked if it is determined that:
 1. Development which has occurred does not comply with the standards set forth in this Code or any special conditions imposed upon the permit/approval;
 2. The permit/approval was approved based on materially incorrect or incomplete information; or
 3. A change has occurred to city regulations, the general plan or applicable law, prior to the development obtaining a vested right or status as a legal nonconforming use, that makes the approved development unlawful or not permitted.
- B. **Revoke Permit.** The Board of Adjustment or City Council, upon finding that the permit holder has not taken corrective actions to resolve issues related to the permit and that a continuation of the permit is not in the interest of the public health,

safety and general welfare, can revoke the permit after providing written notice of its intentions to the holder of the permit.

- C. **Option to Reapply for Permit/Approval.** The holder of the revoked permit may reapply for a new permit/approval at any time as an entirely new application.

Section 6-905 Transferability of Permits.

Permits are transferable to successors in interest.